

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GARY R KING,

Petitioner,

V.

STATE OF WASHINGTON,

### Respondent.

Case No. C18-5722-RBL-TLF

**ORDER TO SHOW CAUSE OR  
AMEND**

Petitioner, who is proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Dkt. 1. Petitioner names the State of Washington as the respondent.

Under Rule 2(a) of the Rules Governing Section 2254 Cases, “the petition must name as respondent the *state officer who has custody*.” (emphasis added). That state officer is the person “with the ability to produce the prisoner’s body before the habeas court.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The proper state officer is determined based on petitioner’s custody at the time he filed his petition. *See, e.g., Carson v. Hood*, 1999 WL 978017 at \*3 (D. Oregon 1999) (noting that warden was a proper respondent because warden had control of petitioner’s release when petitioner initially filed his petition); *see also Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (when prisoner filed petition while restrained, custodian was proper respondent even after petitioner was released). Failure of petitioner to name the correct respondent deprives the Court of personal jurisdiction. *Smith v. Idaho*, 392 F.3d 350, 354-55 (9th Cir. 2004).

1 Therefore, it is ORDERED:

2 1) Petitioner must file an amended petition naming the correct respondent, or otherwise  
3 show cause why the Court should not recommend his petition be dismissed for lack of  
4 personal jurisdiction, **on or before January 4, 2019.**

5 2) The Clerk is directed to provide a copy of this Order to petitioner.

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7 Dated this 4th day of December, 2018.

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11 Theresa L. Fricke  
12 United States Magistrate Judge